

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SALVADOR JIMENEZ,
Plaintiff,

v.

HEIDI GALVEZ, et al.,
Defendants.

No. 2:22-cv-0242 TLN CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 In order to avoid dismissal for failure to state a claim a complaint must contain more than
7 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
8 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007).

9 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
10 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
11 court will, however, grant leave to file an amended complaint.

12 In his complaint, plaintiff complains about care provided for his mental health and
13 conditions of confinement. Plaintiff is advised that inadequate medical care and harmful
14 conditions of confinement can violate the Eighth Amendment. See Estelle v. Gamble, 429 U.S.
15 97, 104-05 (1976) (medical care); Farmer v. Brennan, 511 U.S. 825, 833, 834-37 (1994)
16 (conditions). In order to state a claim under the Eighth Amendment, plaintiff must be specific as
17 to why medical treatment or conditions were lacking, he cannot simply conclude that they were as
18 he does in his complaint. Plaintiff must point to facts indicating the improper treatment or
19 inadequate conditions were the result of a defendant’s deliberate indifference. E.g. Estelle, 429
20 U.S. at 104-05. Finally, plaintiff must point to facts showing that a defendant’s deliberate
21 indifference caused plaintiff injury.

22 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
23 plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be
24 complete in itself without reference to any prior pleading. This is because, as a general rule, an
25 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th
26 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any
27 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
28 and the involvement of each defendant must be sufficiently alleged.

1 In his complaint, plaintiff requests the appointment of counsel. District courts lack
 2 authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v.
 3 United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may
 4 request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell
 5 v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
 6 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must
 7 consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to
 8 articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.
 9 Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to
 10 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.
 11 Circumstances common to most prisoners, such as lack of legal education and limited law library
 12 access, do not establish exceptional circumstances that warrant a request for voluntary assistance
 13 of counsel.

14 Having considered the factors under Palmer, the court finds that plaintiff has failed to
 15 meet his burden of demonstrating exceptional circumstances warranting the appointment of
 16 counsel at this time.

17 In accordance with the above, IT IS HEREBY ORDERED that:

18 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.

19 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
 20 shall be collected and paid in accordance with this court’s order to the Director of the California
 21 Department of Corrections and Rehabilitation filed concurrently herewith.

22 3. Plaintiff’s complaint is dismissed.

23 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
 24 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
 25 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
 26 number assigned this case and must be labeled “Amended Complaint.” Failure to file an

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1 amended complaint in accordance with this order will result in a recommendation that this action
2 be dismissed.

3 5. Plaintiff's request for the appointment of counsel is denied.

4 Dated: March 24, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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